



CITY CLERK

## CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk  
200 East Santa Clara Street  
San José, California 95113  
Telephone (408) 535-1260  
FAX (408) 292-6207

STATE OF CALIFORNIA     )  
COUNTY OF SANTA CLARA)  
CITY OF SAN JOSE         )

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 28072**", the original copy of which is attached hereto, was passed for publication of title on the **19<sup>th</sup> day of June, 2007**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **26<sup>th</sup> day of June, 2007**, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: CORTESI

DISQUALIFIED: NONE

VACANT: NONE

Said ordinance is effective as of **July 27, 2007**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **23<sup>rd</sup> day of July, 2007**.

(SEAL)

*Barbara Conley*  
*for Lee Price*

LEE PRICE, MMC  
CITY CLERK & EX-OFFICIO  
CLERK OF THE CITY COUNCIL  
BY: BARBARA CONLEY, Assistant City Clerk

07/23/07csd

**ORDINANCE NO. 28072**

**AN ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING A LIMITED PILOT PROGRAM TO ALLOW CERTAIN PUBLIC EATING ESTABLISHMENTS, DRINKING ESTABLISHMENTS AND/OR ENTERTAINMENT ESTABLISHMENTS LOCATED IN AN AREA GENERALLY BOUNDED BY SAINT JOHN STREET, 4<sup>TH</sup> STREET, SAN CARLOS STREET, MARKET STREET, SAN FERNANDO STREET AND SAN PEDRO STREET AND THAT ARE LEGALLY OPERATING UNTIL 2:00 A.M. THE ABILITY TO REMAIN IN OPERATION UNTIL 3:00 A.M. FOR A PERIOD OF UP TO ONE HUNDRED EIGHTY DAYS, ALL AS MORE PARTICULARLY DESCRIBED HEREIN**

**WHEREAS**, on June 4, 2007, the provisions of this Ordinance were found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970 and related guidelines promulgated thereunder, all as amended, under File No. PP 07-117.

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1. Definitions**

For the purposes of this Ordinance, the following terms shall have the meanings ascribed to each of them as noted hereinbelow.

- A. **Public Eating Establishment Pilot Program Area.** The "Public Eating Establishment Pilot Program Area" shall mean all of those certain real properties that are wholly located within the area bounded by St. John Street, 4th Street, West San Carlos Street, South Market Street, West San Fernando Street, and San Pedro Street, which Public Eating Establishment Pilot Program Area is visually depicted on that certain map entitled "Public Eating Establishment Pilot Program Area" attached hereto as Exhibit "A" and incorporated herein by this reference.

- B. **Drinking or Entertainment Establishment Pilot Program Area.** The "Drinking or Entertainment Establishment Pilot Program Area" shall mean all of those certain real properties that are wholly located within the area bounded by Santa Clara Street, North 3rd Street, West San Fernando Street, and North Market Street, as well as those properties designated on the County of Santa Clara Assessor Parcel Maps with the following numbers: 259-34-015, 259-34-016, 259-34-017, 259-34-018, 259-34-019, 467-21-004, 467-21-005; 467-21-040; 467-21-027; 467-21-026, 467-21-025, 467-21-024, 467-21-023, 467-21-054, 467-20-072, 467-20-079, 467-23-033, 467-23-034, 467-23-035, 467-23-036, 467-23-037, 467-23-038, 467-23-039, 467-23-088, 467-23-089, 467-23-069, and which Drinking or Entertainment Establishment Pilot Program Area is visually depicted on that certain map entitled "Drinking or Entertainment Establishment Pilot Program Area" attached hereto as Exhibit "B" and incorporated herein by this reference.
- C. **Pilot Program Period.** The "Pilot Program Period" shall mean that duration of time beginning on the effective date of this Ordinance and ending on October 25, 2007 at 3:00 a.m.; provided, however that prior to October 25, 2007 at 3:00 a.m. the City Manager may extend the duration of the Pilot Program Period for a period of up to ninety (90) additional days if the City Manager determines that the extension period is needed or desired in order to gather additional information regarding the effectiveness of the Pilot Program or in order to establish processes through which the Pilot Program could be offered as a more permanent option in a manner that would not interrupt the operations of businesses participating in the Pilot Program. The City Manager shall provide an informational memorandum to the City Council and notices to Public Eating Establishments within the Public Eating Establishment Pilot Program Area and to Drinking Establishments and/or Entertainment Establishments within the Drinking or Entertainment Establishment Pilot Program Area, all on or before October 25, 2007, if the City Manager determines to extend the Pilot Program as provided herein. The City Manager's memorandum to the City



Council shall also set forth the City Manager's reasons for the extension pursuant to the provisions of this Ordinance.

**SECTION 2. Extension of Hours**

- A. All drinking establishments or entertainment establishments operating within the Drinking or Entertainment Establishment Pilot Program Area and all public eating establishments operating with the Public Eating Establishment Pilot Program Area, as each of those terms is defined herein or in Title 20 of the San José Municipal Code, that are legally allowed to operate on certain days until 2:00 a.m. as of the effective date of this Ordinance may operate until 3:00 a.m. on those same days during the Pilot Program Period so long as the establishment meets all of the following criteria:
1. The establishment is at all times operating in full compliance with all federal, state and local laws, written policies, permits and other approvals that are applicable to the establishment, including without limitation all of the following:
    - a. All of the terms and conditions of any development permit issued for the establishment by the City of San José under Title 20 of the San José Municipal Code; and
    - b. All of the terms and conditions of any business license or permit issued for the establishment by the City of San Jose under Title 6 of the San José Municipal Code; and
    - c. All requirements to pay business taxes to the City in accordance with the provisions set forth in Title 4 of the San Jose Municipal Code; and
    - d. The prohibition against the selling, giving, delivering, or purchasing of alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m. of

the same day as described in Section 25631 of the California Business and Professions Code.

- B. No provision of this ordinance shall extend, nor shall be interpreted to extend, the hours during which a business may sell alcoholic beverages pursuant to and in accordance with state and local laws, permits and other approvals applicable to that business.

**SECTION 3. Operations After 2:00 A.M.**

Any public eating establishment located in the Public Eating Establishment Pilot Program Area and any drinking establishment and/or entertainment establishment located in the Drinking or Entertainment Establishment Pilot Program Area that is qualified to participate in the Pilot Program described in this Ordinance by meeting all of the criteria set forth in this Ordinance and that elects to participate in the Pilot Program during the Pilot Program Period by extending its allowed hours of operations from 2:00 a.m to 3:00 a.m. may participate and engage in all those activities that are otherwise legally allowed during its normal operations from 1:00 a.m. to 2:00 a.m., with the exception of selling, giving, delivering or purchasing alcoholic beverages. As noted in Section 2B above, the selling, giving, delivering, or purchasing of any alcoholic beverage after the hours allowed for that activity by applicable state and local laws, permits and other approvals shall remain and is prohibited.

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**SECTION 4. OPERATIONS AFTER PILOT PROGRAM EXPIRATION**

No public eating establishment, drinking establishment and/or entertainment establishment may extend its hours and operate past 2:00 a.m. upon and after the expiration of Pilot Program Period unless such hours of operation are separately allowed under applicable federal, state and local laws, including without limitation a development permit issued under Title 20 of the San José Municipal Code and/or a business license or permit issued under Title 6 of the San José Municipal Code.

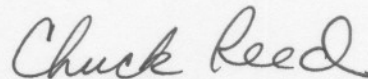
**PASSED FOR PUBLICATION** of title this 19<sup>th</sup> day of June, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

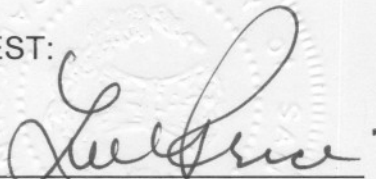
ABSENT: CORTESE

DISQUALIFIED: NONE



CHUCK REED  
Mayor

ATTEST:



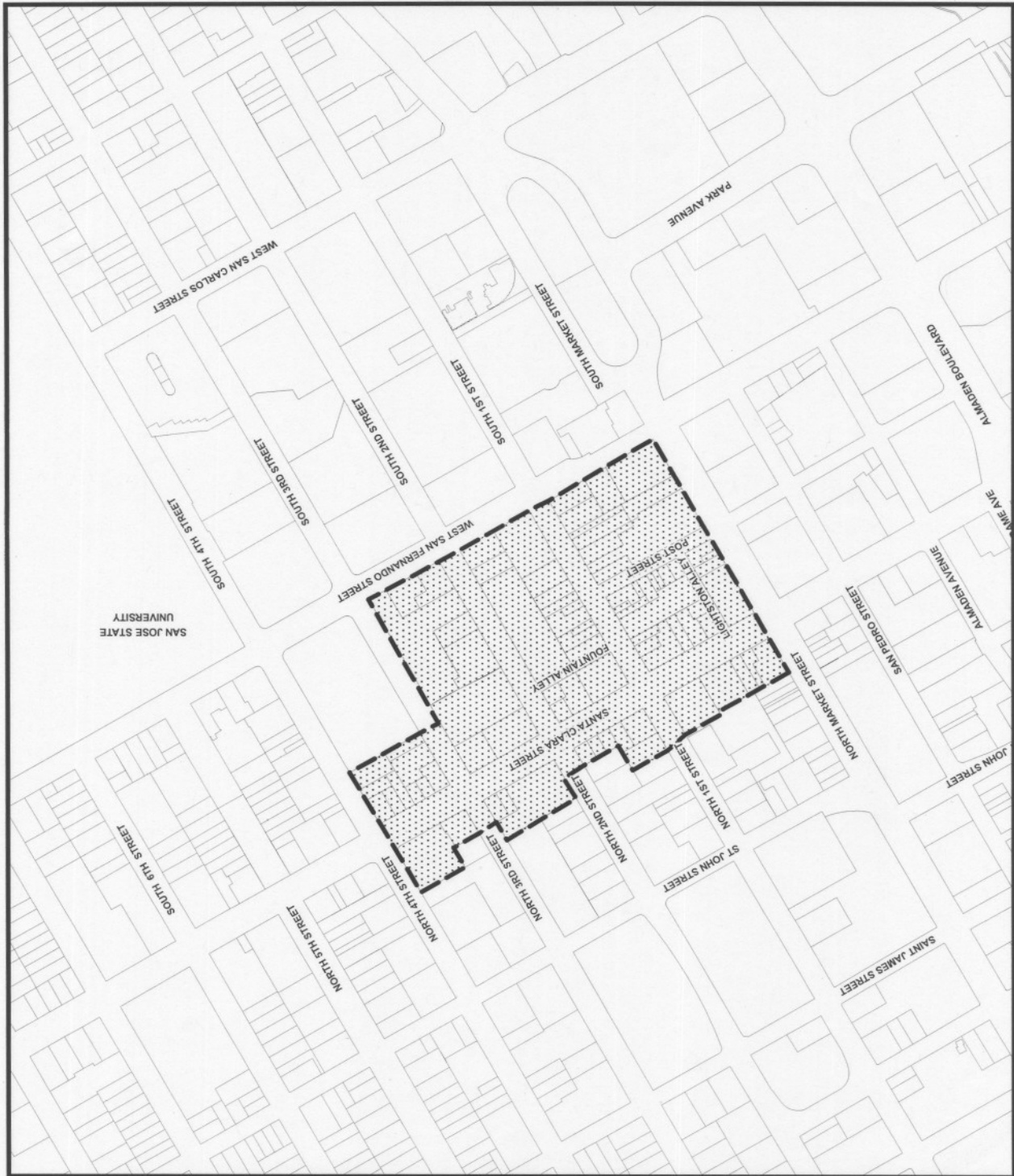
LEE PRICE, MMC  
City Clerk





# Public Eating Establishment Pilot Program Area

**EXHIBIT B**





**SAN JOSE POST-RECORD**

95 S. Market St., Ste. 535, SAN JOSE, CA 95113  
Telephone (408) 287-4866 / Fax (408) 287-2544

CECILIA DELGADO  
SAN JOSE CITY CLERK  
200 E. SANTA CLARA ST.  
SAN JOSE, CA - 95113

**PROOF OF PUBLICATION**

(2015.5 C.C.P.)

State of California                    )  
County of SANTA CLARA            ) ss

Notice Type: GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description: ORDINANCE #28072

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, under date 02/03/1922, Case No. 27844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

06/22/2007

Executed on: 06/22/2007  
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Signature

This space for filing stamp only

SJ#: 1156002

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NOES: NONE

ABSENT: CORTESE

DISQUALIFIED: NONE

CHUCK REED, Mayor

ATTEST:

LEE PRICE, MMC, City Clerk

6/22/07

SJ-1156002#



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